PATENT
2059-106P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Harold G. BROWN		
SERIAL NO.:	NEW-Rule 53(b) Div. Of 09/277,602	GROUP:	Unknown
FILED:	June 15, 2001	EXAMINER:	Unknown
FOR:	A PHARMACEUTICAL COMPOSITION OF COMPLEX CARBOHYDRATES AND ESSENTIAL OILS AND METHODS OF USING THE SAME		

PRELIMINARY REMARKS

Assistant Commissioner of Patent
Washington, D.C. 20231

June 15, 2001

Sir:

The following preliminary remarks are respectfully submitted in connection with the above-identified application.

REMARKS

The following remarks relate to the Examiner's comments in the Office Action mailed August 15, 2000, in the parent application (U.S. serial no. 09/277,602).

Rejection of Claim 33 Under 35 U.S.C. 102(a) over Santus

Claim 33 (corresponding to present claim 1) has been rejected by the Examiner as being anticipated under 35 U.S.C. 102(a) by Santus for the reasons set forth on page 3 of the Office Action. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

The rejection of claim 33 (corresponding to present claim 1) as being anticipated under 35 U.S.C. 102(a) by Santus should be

removed in view of the Rule 131 Declarations filed in the parent applications (see attached). Also note the attached Supplemental Declaration explaining any delay in filing the application. The executed version of the Supplemental Declaration will be filed as soon as it is received by the undersigned.

Rejection of Claims 33 and 34 Under 35 U.S.C. 102(b) over Either Mausner or Taylor-McCord

Claims 33 and 34 (corresponding to present claims 1 and 2) have been rejected by the Examiner as being anticipated under 35 U.S.C. 102(b) by either U.S. Patent 5,215,759 to Mausner or U.S. Patent 5,266,318 to Taylor-McCord for the reasons set forth on page 3 of the Office Action. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Since the present application has an effective filing date of May 12, 1994, neither reference cited by the Examiner appears to be prior art under 35 U.S.C. 102(b).

Any rejection of claims 33 and 34 (corresponding to present claims 1 and 2) as being anticipated under 35 U.S.C. 102(a) by either U.S. Patent 5,215,759 issued June 1, 1993 to Mausner or U.S. Patent 5,266,318 issued November 30, 1993 to Taylor-McCord should be removed in view of the Rule 131 Declarations filed in the parent application (see attached) and in view of the attached Supplemental Declaration.

Rejection of Claims 33 and 34 Under 35 U.S.C. 102(b) over Lowry

Claims 33 and 34 have been rejected by the Examiner as being anticipated under 35 U.S.C. 102(b) by U.S. Patent 4,900,550 to Lowry for the reasons set forth on page 3 of the Office Action. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

The rejection of claims 33 and 34 (corresponding to present claims 1 and 2) as being anticipated under 35 U.S.C. 102(b) by U.S. Patent 4,900,550 to Lowry is overcome in view of the amendments herein (i.e. pharmaceutical composition).

Rejection of Claims 33, 34, 36, 37, 39, 40 and 43-58 Under 35 U.S.C. 102(c) As Being Abandoned By The Inventors

The rejection of claims 33, 34, 36, 37, 39, 40 and 43-58 under 35 U.S.C. 102(c) as being abandoned by the inventors is respectfully traversed. Reconsideration and withdrawal thereof are requested.

The Examiner's position is that there is no explanation for the gap in time between the filing of the parent application and the 2.5 year period after the reduction to practice. However, the Examiner has not established a prima facie case of abandonment. The Examiner cites neither a rule nor case law which supports a position that Applicants owe any explanation to account for the

"delay." Since the Examiner has not established a prima facie case of abandonment, then no response is required.

Assuming, arguendo, the Examiner established a prima facie case of abandonment of the invention, the Examiner's attention is directed to the attached Supplemental Rule 131 Declaration. Briefly, in the Declaration, one of the inventors explains that numerous experiments were conducted during the 2.5 year period in question in order to support the scope of the claimed invention. In this regard, the inventors tested a significant number of complex carbohydrates and a significant number of essential oils for effectiveness in treating various conditions. This was a huge task for any company and a bigger task for independent inventors such as Applicants.

Accordingly, the rejection under 35 U.S.C. 102(c) should be withdrawn since the Examiner has not established a prima facie case of abandonment, or alternatively, Applicants have rebutted the rejection.

Rejection of Claims 33, 34, 36, 37, 39, 40 and 43-58 Under 35 U.S.C. 103(a) over Mausner or Taylor-McCord in view of Santus and Williams

Claims 33, 34, 36, 37, 39, 40 and 43-58 (corresponding to present claims 1, 2, 4, 5, 7, 8 and 11-26) have been rejected by the Examiner under 35 U.S.C. 103(a) over Mausner or Taylor-McCord

in view of Santus and Williams for the reasons set forth on page 4 of the Office Action. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

This rejection should be removed in view of the Rule 131 Declarations filed in the parent application (see attached) and in view of the attached Supplemental Declaration.

Response to Examiner's Comments on Page 5 of Office Action

The Examiner indicates that if Applicants are relying upon the Rule 131 Declarations of record, then Applicants have abandoned their invention. The Examiner's position is unusual on several levels. The same Examiner allowed the parent application over the same evidence in the parent application. The Examiner was correct in the parent application and clearly without basis in the present application. As stated above, the Examiner has failed to establish a prima facie case of abandonment by failing to cite the rules, the MPEP or any case law to support such an unusual rejection. And even if the Examiner established a prima facie case of abandonment, such a case is rebutted by the attached Supplemental Declaration.

With respect to Lowry (i.e. see item "(1)" on page 5 of the Office Action), the amount of hyaluronic acid (i.e. 0.11%) in the Lowry reference is not pharmacologically active. Moreover, the cosmetic composition of Lowry would not be expected to be

pharmaceutically active, by definition. The claims rejected over Lowry have been amended to recite (or already recited) that the claimed composition is a pharmaceutical composition to emphasize the distinction over a cosmetic composition.

In addition, the Examiner's reliance upon Taylor-McCord (i.e. see item "(2)" on page 5 of the Office Action) is without basis since Applicants' have demonstrated that this reference is not prior art against the present invention.

Finally, the Examiner's comments at the top of page 6 of the Office Action are moot since virtually all of the cited references are not prior art to the present application.

Rejection of Claims 50-52 Under 35 U.S.C. 112, Second Paragraph

Claims 50-52 have been rejected by the Examiner under 35 U.S.C. 112, second paragraph, for the reasons set forth on page 2 of the Office Action. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

The terms "high" and "low" are relative terms. Based on the discussion in the specification and based on the knowledge of one of ordinary skill in the art, it is readily recognized when the molecular weight is "high" or "low".

If the Examiner has any questions concerning this application, he is requested to contact the undersigned at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By _____

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